

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DIANE CONMY and MICHAEL B. REITH,

Plaintiffs,

v.

Case No. 4:04-CV-105

AMTRAK, CITY OF KALAMAZOO, JOHN
DOE and LAMPOON, INC.,

HON. GORDON J. QUIST

Defendants.

ORDER APPROVING PARTIAL SETTLEMENT

This Court has been asked by Plaintiffs, the Personal Representatives of Erica Reith, deceased, to approve the settlement of certain claims that the Personal Representatives have against the City of Kalamazoo and Lampoon, Inc., for the wrongful death of Erica Reith on July 14, 2003. Defendants the City of Kalamazoo and Lampoon, Inc. have agreed to pay \$490,000 and \$10,000, respectively, to Plaintiffs. The Court has heard testimony from Personal Representative Diane Conmy, Erica Reith's mother. The Court has also examined the medical records submitted by Plaintiffs.

Erica Reith was a 19-year old girl who died because of injuries she received when her vehicle was struck by a train in the City of Kalamazoo. She had just left the establishment of Lampoon, Inc., a defendant in the case. The City is accused of not maintaining a crossing light which, Plaintiffs claim, was not functioning at the time of the accident. Amtrak is also a defendant, but Amtrak has not settled with Plaintiffs.

The Court makes the following findings:

1. The settlement with the City of Kalamazoo and Lampoon, Inc. is fair and reasonable and is in the best interest of Erica Reith's estate. .
2. Erica Reith suffered conscious pain and suffering before she died from the injuries sustained in the accident. This finding is based upon the testimony of Diane Conmy and the medical records of Drs. Daniel Palermo, M.D., Barbara Koenig, M.D., and Alain Y. Fabi, M.D. Specifically, Ms. Conmy testified that the decedent appeared to be somewhat conscious when she saw her, and Dr. Fabi observed reactions that are consistent with deep pain. The doctors also observed reactions to sustained deep nail bed pressure, reactions to being turned, slight corneal reflexes, slight coughs, and movement of right lower extremity "only with deep pain, and gag reflex." Erica Reith was given morphine to reduce her pain.

Therefore, this Court approves the settlement between Plaintiffs, the City of Kalamazoo, and Lampoon, Inc. pursuant to M.C.L. § 600.2922.

This Order and the findings of fact in paragraph number 2 are binding upon, and for the benefit of, the Settling Defendants only. They are not binding upon Amtrak, and are not to be used in any way in any trial between Plaintiffs and Amtrak.

Order of Distribution

The settlement amount is \$500,000, of which the City of Kalamazoo will pay \$490,000 and Lampoon, Inc. will pay \$10,000, respectively. Of the \$500,000, \$50,000 will be set aside to the estate for future litigation and will not be included for purposes of calculating attorney's fees. Of the remaining \$450,000, \$150,000 will be for the attorney's fee. The remaining \$300,000 will be distributed as follows:

| | |
|-----------------|---------------------------|
| Betty Reith: | 0 |
| Jonathan Reith: | one-third of net proceeds |
| Diane Conmy: | one-third of net proceeds |
| Michael Reith: | one-third of net proceeds |

Dated: May 16, 2005

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE